

COMPLIANCE BOARD OPINION 92-4

November 17, 1992

Mr. Alfred Bailey
Mr. Richard Potts

The Open Meetings Compliance Board has considered the complaint that you filed regarding an alleged violation of the Open Meetings Act by the Wicomico Board of Electrical Examiners on August 5, 1992, in light of the written response of the Electrical Board and the views expressed at the informal conference held by the Compliance Board on November 4, 1992.

Your complaint was as follows:

The alleged violation occurred on August 5, 1992 at the regularly scheduled board meeting. After a brief discussion and approval of the minutes of the previous meeting, the chairman called for a vote to go into closed session. When questioned on procedure to do this, it was ignored and the board continued to do business as usual, completely ignoring the Open Meetings Act and the steps taken to be in compliance.

The response of the Board of Electrical Examiners indicates that the closed session was held to deal with two types of matters: complaints against individual licensees and a discussion of a an applicant's licensing examination. The Electrical Board contends that it was legally authorized to close the session for these purposes and, moreover, that it substantially followed the procedures specified in the Open Meetings Act for closing a meeting. The Electrical Board does acknowledge, however, that it did not identify the specific statutory authority for closing the meeting.

The first step in any analysis of the Open Meetings Act is to consider whether the Act applies to the meeting in question. Here, there is no question that the Board of Electrical Examiners is a "public body" and was holding a "meeting" on August 5. See §10-502(g) and (h) of the State Government Article. The determinative question about the applicability of the Act, therefore, is whether the closed session of the Electrical Board concerned matters that are within the scope of the Act. If so, the Act's substantive and procedural requirements apply; if not, none of these requirements apply.

With an important exception to be discussed below, any "executive function" carried out by the Electrical Board is not subject to the Open Meetings Act. §10-503(a)(1). The term "executive function" is defined in pertinent part as "the administration of ... a law of a political subdivision of the State"

In the opinion of the Compliance Board, the Board of Electrical Examiners engages in an "executive function" when it discusses a complaint that has been lodged against an electrician. In the typical case, we suppose, the Electrical Board considers whether the complaint appears to have merit, and if so, to encourage the electrician to rectify the problem. In rare instances, the Board might consider revoking a certificate of registration or pressing criminal charges under §§138-19 or 138-25 of the Wicomico County Code. Whatever the end result, in these cases, the Electrical Board is administering the responsibilities given to it under the County Code and is therefore engaged in an "executive function" outside the scope of the Open Meetings Act. Thus, insofar as the Electrical Board was discussing complaints with individual electricians at its closed session on August 5, no violation of the Open Meetings Act occurred, because the Act was not applicable.

The situation is different with respect to the portion of the closed session in which the Electrical Board dealt with an examination of an applicant for registration. Even if this activity were within the "executive function" exemption, §10-503(b)(1) nevertheless makes the Act applicable "to a public body when it is meeting to consider ... granting a license or permit."¹ When the Electrical Board is dealing with an examination as part of the license application process, it must comply with the Open Meetings Act.

To close a meeting under the Act, a public body must rely on one or more of the 14 exceptions set out in §10-508(a). One of these allows a public body to meet in closed session to "prepare, administer, or grade a scholastic, licensing, or qualifying examination." §10-504(a)(11) (emphasis added). Thus, in the view of the Compliance Board, the Electrical Board was legally authorized to close the portion of its August 5 meeting at which it discussed an examination of an applicant.

The Open Meetings Act also requires a public body to adhere to certain procedural requirements if it is to close a meeting, and in this respect the Electrical Board did not comply with the Act. Specifically, §10-508(d)(2)(ii) requires the presiding officer to "make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed." This statement is to be available at the time that the body makes its decision to go into closed session; an oral discussion that will later be recorded in

¹ In this context, the "certificate of registration" that an electrician receives under Chapter 138 of the Wicomico County Code is the equivalent of a "license."

minutes is not sufficient. The Board of Electrical Examiners did not comply with this requirement at its August 5 meeting.²

The Compliance Board notes a second aspect of noncompliance at the August 5 meeting. Under §10-508(d)(3), "[i]f a person objects to the closing of a session, the public body shall send a copy of the written statement required under paragraph (2) of this subsection to the [Open Meetings Compliance] Board." The minutes of the August 5 meeting indicate that Mr. Bailey objected to the closing of the session. But because the Electrical Board had not prepared the written statement called for by the Act, it obviously did not comply with the requirement that it submit the written statement to the Compliance Board.

In summary, then, the Open Meetings Compliance Board finds that the Wicomico County Board of Electrical Examiners violated the Open Meetings Act at its August 5 meeting by failing to make a written statement prior to closing its session as required by §10-508(d)(2)(ii) and by failing to submit the written statement to the Compliance Board after Mr. Bailey's objection, as required by §10-508(d)(3). The Board of Electrical Examiners did not violate the Open Meetings Act, however, by conducting the closed session.

In closing, the Compliance Board wishes to thank Mr. Bailey and Mr. Potts and the members of the Board of Electrical Examiners and its attorney for their forthright and helpful presentations at the informal conference conducted by the Compliance Board on November 4, 1992. The Compliance Board is hopeful that, with heightened awareness on the part of the Electrical Board to its obligations under the Act and with a clearer understanding by Mr. Bailey and Mr. Potts of what the Act does and does not require, issues of Open Meetings Act compliance can be worked out more amicably in the future.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
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² The Compliance Board understands that the Electrical Board, working with its attorney, has now developed written statement forms that will help it comply with §10-508(d)(2)(ii).